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Paper 51
Date: June 18, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MERCK SHARP & DOHME LLC,
Petitioner,

v.

THE JOHNS HOPKINS UNIVERSITY,
Patent Owner.

IPR2024-00648
Patent 11,643,462 B2

Before DEBORAH KATZ, SHERIDAN K. SNEDDEN, and
DEVON ZASTROW NEWMAN, *Administrative Patent Judges.*

NEWMAN, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

Patent Owner and Petitioner have filed three motions to seal *(see* Papers 26, 41, and 48), along with a proposed Modified Protective Order that the parties have negotiated (*see* Paper 26, Appendix A).

Motion for Modified Protective Order

In Paper 26, Patent Owner moves on behalf of both parties for a Modified Protective Order (MPO) as "necessary to protect JHU's and Merck's highly sensitive filings with the FDA, competitively sensitive financial information, and third-party data" in the proceedings and for consistency with "definitions provided in the district court protective order" (Paper 26, 8). The MPO includes modifications from the Default Protective Order found in the Consolidated Trial Practice Guide (Nov. 2019).[1] These modifications are shown in a red-line version (Paper 26, Appendix A) and a clean version (*id*., Appendix B). The parties state that they have negotiated the terms of the proposed order, and "have agreed that these terms are appropriate and jointly request entry of the MPO." *Id*., 1.

We determine that good cause exists for entry of the Protective Order as proposed. Therefore, based on the certification and agreement of the parties, and an examination of the terms of the MPO, we are persuaded there is good cause to enter the MPO.

Motion to Seal

The parties move to seal Exhibits 1116, 1118, 1119, 1150, 1245, 1283, 2167–2174, 2181, 2182, 2273–2275, and 2404, which provide reportedly highly confidential information belonging to the parties that has been exchanged during this proceeding, and for which the parties have taken requisite precautions to protect during the pendency of this proceeding (*see*

[1] *Available at* https://www.uspto.gov/TrialPracticeGuideConsolidated.

Papers 26, 41, and 48). The parties also respectively move to seal Patent Owner's Response (*see* Paper 26), Petitioner's Reply (*see* Paper 41), Patent Owner Sur-Reply (*see* Paper 48). The motions to seal are uncontested. (*See* Paper 26, 1; Paper 41, 1; Paper 48, 1; and Paper 73, 1.)

The Board recognizes "a strong public policy for making all information filed in a quasi-judicial administrative proceeding open to the public, especially in an *inter partes* review which determines the patentability of claims in an issued patent and therefore affects the rights of the public." *Garmin Int'l v. Cuozzo Speed Techs., LLC*, IPR2012-00001, Paper 34 (PTAB Mar. 14, 2013), 1–2. Except as otherwise ordered by the Board, the record of an *inter partes* review shall be made available to the public. 35 U.S.C. § 316(a)(1); 37 C.F.R. § 42.14.

The moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). The standard for granting a motion to seal is "for good cause." 37 C.F.R. § 42.54(a).

The parties contend that good cause exists to seal the exhibits and papers that are the subject of its three motions because Petitioner asserts that these documents relate to Petitioner's proprietary drug Keytruda® and that the disclosure of the information contained in the documents would cause competitive harm by revealing confidential research, technical, and commercial information. (*See* Paper 33, 4–6[2]; Paper 41, 2–4; Paper 48, 2–4.)

[2] We note that Patent Owner states that it "does not concede agreement with the assertions in Merck's explanations," and that it asserts Merck's explanation for the necessary confidentiality only. *See* Paper 26 n. 2.

Having considered the parties' motions, we are persuaded there is good cause to seal the materials in question. The exhibits appear to include research proposals and data, as well as testimony about these exhibits, which could reveal confidential research, technical, and commercial information. We observe further that Patent Owner has filed redacted versions of the exhibits and papers for which it seeks only partial sealing.

It is

ORDERED that the Modified Protective Order (Paper 26, Appendix B) is entered, and will govern the conduct of this proceeding unless otherwise modified; and

FURTHER ORDERED that the confidential versions of Exhibits 1116, 1118, 1119, 1150, 1245, 1283, 2167–2174, 2181, 2182, 2273–2275, and 2404, and the confidential versions of Patent Owner's Response, Petitioner's Reply, and Patent Owner Sur-Reply are sealed.

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